

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-489

June 15, 2000

PUBLIC UTILITIES COMMISSION
Amendments to Standard Offer Service Rule
(Chapter 301)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to amend certain provisions of our current standard offer rule. The proposed amendments result primarily from our experience in implementing the rule and conducting last year's standard offer bid process.

II. BACKGROUND

By Orders issued June 29, 1999 and April 22, 1998 (Docket Nos. 98-576 and 97-739), the Commission adopted rules governing standard offer service and the bid process by which it would choose standard offer providers (Chapter 301). Because these rules were designated major substantive, the Legislature authorized their final adoption under 5 M.R.S.A. § 8072.

Pursuant to the standard offer rules, the Commission conducted bid processes during 1999 to choose standard offer providers for the service territories of each of the investor-owned utilities in Maine.¹ These bid processes involved the issuance of request for bids (RFBs) during August, the submission of bids in October, and the designation of standard offer providers by December 1. The processes resulted in the Commission designation of standard offer providers for each of the three standard offer classes in the Maine Public Service Company territory and for the residential/small non-residential class in the Central Maine Power Company (CMP) territory. However, the Commission rejected the bids and terminated the processes for the two remaining classes in CMP's territory and for the three classes in the Bangor-Hydro Electric (BHE) territory.²

¹ Pursuant to section 8(E) of Chapter 301, the consumer-owned utilities opted to conduct their own bid processes to obtain standard offer providers for their respective territories.

² The Commission, pursuant to Chapter 301 section 8(D), directed CMP and BHE to provide standard offer service for those classes in which the Commission bid process did not result in the selection of a standard offer provider.

Based on our experience in conducting the bid processes and on our knowledge of the wholesale market and concerns of market participants, we are proposing to amend Chapter 301 in several respects so as to improve the process and increase the likelihood of successfully choosing standard offer providers for all classes at reasonable standard offer rates. Because the Legislature amended the Restructuring Act to designate future changes to the standard offer rules as routine technical rules, P.L. 1999, ch. 577, we are able to, and intend to, promulgate these rule changes before we conduct our next bid process, for standard offer service beginning March 1, 2001.

In many cases, our proposed amendments provide the Commission with greater flexibility to determine the details of the bid process. For example, the timing for issuance of the RFBs, submission of bids, and designation of the providers would not be determined in the rule, but specified in the RFBs. Additionally, we are considering allowing bidders more flexibility in crafting their bids, such as allowing bids for different time periods. Increased flexibility in this area, however, raises issues of the Commission's evaluation criteria. As discussed below, we seek comment on these matters, as well as any issue related to our standard offer rule.

III. DISCUSSION OF PROPOSED AMENDMENTS

A. Rate Structure (section 2(A)(3))

The current rule allows standard offer rates for the medium and large non-residential classes to reflect seasonal and time-of-day differentiation only if compatible with the transmission and distribution (T&D) utility's rate structure.³ We propose to remove this restriction for seasonal differentiation. Utilities in Maine currently have rate structures that separate between winter months and non-winter months. Because the New England generation market tends to peak in the summer, suppliers may want to charge higher prices in the summer months only. Allowing suppliers this flexibility may also help address the concern over "gaming" the standard offer which can occur if customers move onto standard offer service at times of relatively higher market prices. Our understanding is that the utilities' billing systems can accommodate flexibility in this regard. Conversely, we understand that it is much more difficult for utility billing systems to accommodate flexibility for time-of-day rates. Additionally, it appears that such flexibility is not as important as allowing suppliers to reflect higher summer costs in their rates. For these reasons, we do not propose a similar change for time-of-day rates.

B. Opt-Out Fees (section 2(C)(2))

Our current rule addresses the concern of "gaming" the standard offer (i.e. the strategic movement of customers in and out of the service) through the imposition of opt-out fees. The fees, which are intended to be a deterrent, are assessed when a customer or a group of customers with a demand greater than 50 kilowatts leaves the

³ The current rule does not allow any differentiation for the residential/small non-residential class. We do not propose to change this aspect of the rule.

standard offer within 12 months of returning from the competitive market. During last year's bidders' conference, a question was raised as to whether the language of the rule would allow the imposition of an opt-out fee on the supplier of electricity (as opposed to an aggregator) who moved groups of smaller customers in and out of the standard offer. On September 9, 1999, the Commission issued an advisory ruling that concluded that the opt-out provision applies to suppliers as well as aggregators (Docket No. 99-111). We propose to modify the language of the rule to clarify this point.

To ensure the intended deterrent effect of the opt-out charge, the proposed rule increases the charge to equal the customer's standard offer bill for the two most recent months that the customer has taken standard offer service. The current rule uses a single month's bill as the opt-out charge. We seek comment, however, on whether the charge should be increased in light of our proposal to allow seasonally differentiated rates, see section III(A), above. We also seek comment on whether the gaming issue should be addressed by modifying the rule so that medium and large non-residential customers may not return to the standard offer after entering the competitive market.

The proposed rule also adds a provision to clarify that, if the charge is imposed, customers above 50 kW are responsible to pay the charge (regardless of whether the customer is part of an aggregate), while the competitive electricity provider must pay the charge resulting from smaller, aggregated customers gaming the standard offer.

C. Transfer of Service (section 2(D))

The current rule states that, except for limited exceptions, transfers onto and out of standard offer service will occur on the "normally scheduled meter read date." Because occasionally utilities will not read the meter on the "scheduled" date, we have changed the language to refer to the "meter read date." To ensure proper billing, the transfer of service occurs on the actual meter read date, not the scheduled date.

D. Financial Capability (section 3(A)(2))

1. Amount

Currently, our rule ties the amount of the required bond, letter of credit, or corporate guarantee to the bid price. However, as discussed below, we are proposing to alter the rule to allow the Commission to pre-screen bidder eligibility prior to the submission of the actual bid prices. The ability to satisfy the financial capability requirement is a major component in determining bidder eligibility. Accordingly, we must amend the rule so the amount of the financial capability requirement is not tied to actual bid prices. We propose that the amount of the requirement be \$0.01 per kilowatt-hour multiplied by the appropriate billing units of the standard offer class (the appropriate billing units will be specified in the RFBs). The amount of the financial security ought to approximate the damage that might result if a designated provider

defaulted on its obligation to provide service at its bid price. The actual damage will depend on market conditions at the time of the default and cannot, therefore, be known in advance. In our view, the proposed amount is sufficient to ensure the financial capability of the bidder and to protect standard offer customers in the event of the default.

As mentioned, the Commission may allow bids for differing time periods. Accordingly, the proposed rule specifies that the amount of the financial capability requirement will reflect the number of years of the bid. To ease the burden on suppliers, the proposed rule also states that the amount of the requirement may decline as the remaining obligation declines. The Commission will specify the details by which the financial requirement may decline in the RFBs.

2. Corporate Guarantee

To allow bidders greater flexibility in meeting the financial capability requirement, we propose to allow a corporate guarantee to be provided by the standard offer provider's wholesale supplier or an affiliate of the wholesale provider, in lieu of the bidder. In our view, this change could reduce the cost of the financial capability requirement without sacrificing the customer protection aspect of the provision.

We also propose to lower the debt rating criteria from "A" to "BBB+" for Standard & Poor's and Fitch, and from "A2" to "Baa1" for Moody's. Our current view is that lowering the requirement to this degree will allow additional companies the option to provide a corporate guarantee while maintaining sufficient protection for customers. However, we seek comments on this matter. We also changed the rule to account for the merger of Fitch and Duff & Phelps.

3. Use of Proceeds

Finally, we propose to add a new provision (section 3(A)(2)(c)) that specifies that the proceeds of the financial capability requirement may only be used to pay the additional cost of providing standard offer service. The "additional cost" is defined as the cost beyond the amounts standard offer customers would have paid to the defaulting provider through their standard offer rates. This provision was contained in last year's RFBs. We propose to add it to the rule to assure that the financial requirement proceeds will only be used to cover the actual damages of a default.

E. Provider Obligations (section 3(B))

We propose several minor changes to this section of the rule.

The current rule has one provision that states that providers are responsible for line losses up to the delivery point (paragraph 1), and another provision that states standard offer service includes losses from the delivery point to the customer

meters (paragraph 2). We have simplified the rule by stating in one provision that providers are responsible for all losses.

Paragraph 4 requires providers to comply with the requirements of the bulk power system operator. Regarding northern Maine, we have replaced general descriptions with specific references to the Northern Maine Independent System Administrator and the Maritimes control area.

Paragraph 5 of the current rule requires providers to comply with their contractual obligation to the T&D utility. We propose to broaden this provision to add an explicit statement that providers must comply with all applicable statutory and regulatory requirements, as well as requirements contained in the RFBs. We have also deleted references to the “standard form contract” and replaced them with “standard offer contract.”⁴ We make this change because, as discussed below, we may allow bidders to suggest changes to the standard form contract during the bid process.

F. Utility Obligations (section 5(A))

We propose a minor change to section 5(A), which requires utilities to provide T&D services to standard offer customers. The current rules states that utilities must provide services from the “delivery point.” Because the delivery point may not be the border of the utility’s service territory, we propose to modify the language to state that T&D services must be provided within the utility’s “service territory.”

G. Standard Contract (section 5(D))

We propose to amend Section 5(D)(2) to state that the Commission may allow bidders to propose changes to the standard form contract during the bid process. The Commission would be required to consult with the utility before accepting any changes to the contract. We propose this change because some potential providers may not participate in other processes where the standard form contract is developed. Certain language in the standard form may, however, represent a barrier to submitting a bid. Although we do not foresee negotiating major changes to the contract during the bid process, accommodating reasonable changes may help increase the number of bidders. The process by which proposed changes would be made and considered would be stated in the RFB. One possible approach would be for such proposed changes to be made during a prescreening process. In this way, the bidder proposing the change, as well as all other bidders, would know whether a particular change is acceptable prior to making a firm bid. We seek comments on this matter.

H. Information Provided By Utilities (section 6)

The current rule is very specific and formal in defining the data, format, and process by which utilities must provide information to standard offer bidders. We

⁴ We make the same change in other areas of the rule.

propose several changes to this section to give the Commission greater flexibility to determine, during the bid process, what information should be provided and how to provide it. These changes will allow the Commission to react, during the design of the bid process, to suggestions as to precisely what data would be the most helpful and how best to provide it.

I. Bid Requirements (section 7)

1. Term Length and Contingencies

Section 7(A)(2) is amended to remove language that is now obsolete concerning the initial standard offer period.

The proposed rule maintains the requirement that prices be fixed. We seek comment on whether the rule should allow more flexibility in this regard (e.g., prices indexed to spot market prices).

We propose to remove the prohibition (contained in Section 7(B)(1)) on bids that are contingent on selection as the provider for another standard offer class. The removal of the prohibition on contingent bids does not mean that we will allow such bids; rather, the Commission would have the flexibility to decide whether these type of bids should be allowed when it designs the RFBs.

In last year's initial bid process, we specified that the term length should be one year and that contingent bids were not allowed. The objective of this approach was to keep the process simple, make the evaluation criteria as objective as possible, and avoid having to trade-off the interests of classes against one another. However, to maximize participation by bidders and promote creativity that might result in bids that are in the public interest, we are considering allowing bidders more flexibility in crafting their bids. For example, we are considering whether to allow bids for term lengths of from one up to four years. We are also considering allowing bids contingent on selection for other classes, either within the same service territory or in other service territories. If we do allow bidders more flexibility, we anticipate allowing individual bidders to submit more than one bid. Permitting such flexibility, however, raises questions as to how such bids would be evaluated. We request comment on the following:

-Should bids of varying lengths of time be allowed?

-Should contingent bids be allowed? If so, what contingencies should be allowed? Should contingent bids be restricted to specific contingencies that are explicitly authorized by the Commission in the request for bids?⁵

⁵ For instance, after rejecting all bids for the CMP medium and large non-residential standard offer classes and all BHE standard offer classes, we invited a

Are there particular types of contingent bids that should not be allowed? Should the rule be silent on contingent bids and leave the matter to be decided for the request for bids or bid evaluation process?

-How should the Commission evaluate contingent bids of varying term lengths?

-Should the evaluation criteria be totally objective or should the Commission be allowed to apply judgment (e.g. overall public interest)?

-Is it necessary for the evaluation criteria to be known by bidders prior to the submission of the bids? Why or why not?

-Should the Commission allow bids that combine customers (e.g., medium standard offer customers in CMP and BHE territories).

-Should there be any restriction on the type of bids that should be allowed? How can we maximize bidder flexibility and creativity while maintaining process that is fair to all participants?

2. Portions of Class Requirements

The current rule requires any bid for a portion of the medium and large non-residential classes to include a bid for 100% of the class load. We propose to remove this requirement so that bidders may bid on any 20% increment of the class load. Under the proposed rule, all three of the standard offer classes would be treated identically: bids can be up to any 20% increment, but must include a bid for all increments up to the highest percentage increment in the bidder's proposal.

The purpose of the original provision was to ensure the receipt of bids for the entire medium and large class requirements. However, bidders could easily frustrate the intent of the provision by bidding an extremely high price for the higher increments that they were not interested in serving. Accordingly, our view is that the current provision does not serve any useful purpose. We propose to maintain the requirement for bids on the lower increments to make it more likely that we can fulfill the Legislative directive to obtain at least three standard offer providers for each utility territory (subject to acceptable rate impacts). See 35-A M.R.S.A. § 3212 (2).

3. Statement of Financial Capability

Consistent with our proposal, discussed in section III(D) above, to allow wholesale suppliers or affiliated corporations to provide a corporate guarantee, the

second round of standard offer bids that could be contingent on the bidder also winning the utility's auction of Chapter 307 electric power entitlements.

proposed rule states that the certified statement regarding the provision of the corporate guarantee that must accompany the bid may be provided by the wholesale supplier or an affiliate.

J. Bidding Procedure and Selection (section 8)

1. Process

As mentioned above, we propose to amend the rule to remove certain timing and procedural requirements. This will give the Commission more flexibility to determine the precise bidding procedure that will maximize bidder participation and the submission of desirable bids. The proposed changes would also allow the Commission to adopt alternative timing and procedures for the different utility territories and to decide on different procedures for future years without having to conduct a new rulemaking.

The Commission would determine the details of the process when it develops the RFBs. To inform these determinations, the Commission seeks comment on what the length of time between firm bid submission and selection should be. Our current view is that the time period should be substantially reduced from the two months prescribed in last year's process. We are currently considering a period of no more than two weeks. We may be able to reduce this period further if we stagger the processes for the three utilities. We seek comment on the advantages and disadvantages of staggering the processes. We also seek comment on when the bid process should begin and when it should conclude with the designation of the providers. The proposed rule states that the selection date will be no less than 45 days before the beginning of service. This provision is intended to ensure that the winning bidders have adequate time to prepare to provide service. We, however, seek comment on the adequacy of this provision.

2. Duration of Proposals

As discussed above, we are considering allowing bids for various term lengths. Accordingly, we have added a provision (Section 8(5)) that states the Commission may proceed in this manner. The provision specifies only that the bid duration would be no less than one year. The determination of the bid duration and whether to allow bids of different durations would be made during the development of the RFBs.

We seek comment on the term lengths that should be allowed in proposals. Should the term length be pre-set? If so, what should it be? In the alternative, should bids of differing term lengths be allowed? If so, how should they be evaluated?

3. Selection Criteria

The current rule states that the selection criteria for each standard offer class will be the lowest bid price. The proposed rule recognizes that, because of the possibility of contingent bids and varied bid term lengths, see Section III(I), above, it may not be possible to objectively compare bids as to price. To the extent that bids are directly comparable, i.e., do not vary in length or contingencies, the Commission will continue to rely on price. When bids are varied as to length of service period and contingencies, it may not be reasonable to rely solely on price. In such a case, the Commission will assess the bids based upon a public interest standard and will explain the application of that standard in our selection order. We seek comment on our public interest standard criteria, and invite suggestions as to any objective criteria the Commission could apply when bid lengths and contingencies may vary.

4. Multiple Providers

The current rule states that multiple providers will be chosen for a class if doing so does not increase “total electric rates” by more than 0.5%. For ease of administration, we propose to change the rate impact test so that it compares standard offer prices, rather than total electric rates. We propose that the rate impact test be a 1.5% increase in the standard offer price. Because the generation component of total rates is approximately one third, the proposed 1.5% test generally maintains the same rate impact criterion as in the current rule.

5. Insufficient Bids

We propose to add provisions stating that, in the event the Commission receives no bids for a class or finds that all bids for a class must be rejected, it may negotiate with individual providers or direct the utility to provide the service. The current rule provides the Commission with only the option of requiring the utility to be the standard offer provider. We add the option of individual negotiations with potential suppliers because we prefer to keep utilities out of the generation business, as contemplated in the Restructuring Act. In addition, we note that this change makes the provision more consistent with the provisions regarding a default by a standard offer provider. In such a case, section 9 of the current rule allows the Commission to negotiate with potential replacement suppliers in addition to directing utilities to provide the service.

K. Portfolio Requirement

We seek comment on whether Maine’s portfolio requirement creates a significant barrier for the submission of standard offer bids at reasonable prices. We seek comment on ways the portfolio requirement could be modified to reduce the barrier on reasonable bids. Additionally, we seek comment on whether the policy goals

embodied in the portfolio requirement can be satisfied through a system benefits charge or by other means that would lessen or eliminate the barrier on reasonable bids.⁶

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on July 19, 2000 at 1:30 p.m. in the Public Utilities Commission hearing room. Written comments on the proposed rule may be filed until August 2, 2000, however, the Commission requests that comments be filed by July 14, 2000, to allow for follow-up inquiries during the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 2000-489, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if special accommodations are needed to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Request for reasonable accommodations must be received 48 hours before the schedule event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact, the economic effects, and all other implications of the proposed rule.

The Administrative Director shall send copies of this Order and the attached proposed rule to:

1. All electric utilities in the State;
2. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;
3. All persons on the service list in the rulemaking, Public Utilities Commission, Bidding Processes and Terms and Conditions for Standard Offer Service (Chapter 301), Docket No. 97-739;
4. All licensed competitive electricity providers in the State;
5. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
6. The Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

⁶ We note that any change to the portfolio requirement would require legislative action.

Accordingly, we

ORDER

1. That the Administrative Director send copies of this Notice of Rulemaking and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule; and
2. That the Administrative Director send a copy of this Notice of Rulemaking and attached proposed rule to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine, this 15th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond